Local Organisations and the Purpose of Money

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The Reeves Report, not least in its title, marks itself as the moment of recognition of generational change in the history of land rights in the Northern Territory. The first generation Reeves judges to have been a successful exercise in cultural recognition and restoration, following from what Woodward called "the doing of simple justice to a people who have been deprived of their land without their consent and without compensation" (Australia 1974: 2). With the disposal of final land claims (Reeves 1998: Chaps 11 and 12), that period can now be packed away. For the new generation, Reeves seeks to provide a new orientation. The priority now, he says, is to address those social statistical problems of depressed living standards that continue to affect the Aboriginal population of the Northern Territory, and in so doing extend the benefits of land rights to those Aboriginal people who have not been able to claim ownership of land (1998: 217). The present task of legislative amendment must therefore be driven by a philosophy of social engineering, in order that land rights be made into a means of effective material uplift for the next generation (1998: 92).

Rethinking the management of money is thus central to Reeves' new vision. His rethinking is broad, moving from the essential policy status of the moneys themselves, to a recasting of the structures through which they move. The new understandings that are to govern land rights moneys for the next generation are:

1. All moneys must be seen to be, or be treated as if they are, public moneys to the end-point of final use, including moneys gained by private negotiation (1998: 351-52);
2. As public moneys, their management and use will be made subject to what I will call "deep accountability": accounting practices must be sufficient to demonstrate ordinary financial propriety, and application of moneys must accord with externally prescribed social policy priorities;
3. All Aboriginals Benefit Reserve moneys are to be distributed across the Territory by a centralised and discretionary system that responds to the competitive demonstration of social need by the regions, and dispenses with any notion of local-area or traditional entitlement.

While certainly of broad coverage, these changes do not always appear well argued in principle, nor their implications, at the local level especially, well considered. The purpose of this paper is to point to some of these difficulties.

1. Public moneys and accountability:

There has been a long-standing uncertainty about the status of mining royalty equivalents under the LRA. Altman has characterised the disagreement as flowing from alternative

interpretations of the policy origins of the moneys: they are either compensation for disturbance to traditional lands and restriction of amenities, or they are a return in the form of rental for alienation of land that is privately owned. If the former, the moneys are public, with an associated implication that they should be used to remedy the social problems caused by the disturbance. If the latter, then they are private income from privately leased land and available for private purposes.

Reeves has no doubts on this issue. With respect to what are now known as “area affected” moneys, that is the large flow of statutory royalty equivalent payments under s.35(2), he relies on three points – that they flow from a public policy decision of the Government, they come from general revenue, and they are compensatory in intent – to argue that these are public moneys (1998: 351). That much is consistent with arguments that have been put before in that debate. But Reeves goes further, and begins to reveal the singularity of his thinking about land rights, when he deals with negotiated royalties and all other agreement moneys, that is, all those moneys that currently flow to Aboriginal interests from the bargain that they have been able to strike through direct dealings with mining companies and other agencies. These, he acknowledges, are private moneys: they do not come from general revenue and do not have compensatory intent. However, the first of the points that he makes about statutory royalties, that they flow from a public policy decision of the Government, does also apply to these private agreement moneys, and that for Reeves is sufficient to treat them as if they are public moneys (1998: 352). I leave it to administrative lawyers to assess the defensibility of such official oversight of private funds, but within the Reeves scheme, it prepares the ground for the imposition of a unitary regime on the management of land rights moneys.

The next matter is the intended effect of such a regime. Once it is decided that the public policy origin of payments is sufficient grounds for treating them as public moneys to the point of final use, two things follow. Firstly, and Reeves goes to some lengths on this, they must be directed to charitable purposes, and must not be payable to individuals outside the rubric of a charitable purpose. Secondly, they must be fully and transparently accounted for. In adopting these positions Reeves is placing himself unequivocally on one side of a familiar debate, so that, while his views are still arguable, they are not new. What is new is the application of such strictures to those agreement moneys previously understood to be private. Again, however, Reeves goes further. The public policy from whence moneys originate is itself to be changed. The Land Rights Act is to be given new purposes, the one amongst them relevant here being “ to provide opportunities for the social and economic advancement of Aboriginal peoples in the Northern Territory” (Reeves 1998: 74-77). Thus, all land rights moneys are public moneys, and all are to be devoted to that public purpose.

For Reeves, advancing that purpose requires new structures and new principles of operation. He cites unsurprising but telling figures showing that money from land rights has followed the ownership of land, so that those communities holding little land have received no mining royalty equivalents (1998: 358). He therefore wants to mobilise all forms of land rights money for deployment in favour of any Aboriginal group in the Territory. To that end he does a number of things. Firstly, he centralises financial control

in the new institution of NTAC. This is the organisation at the centre of the unitary financial regime, that will have control of all land rights moneys, and to which, Reeves hopes, ATSIC and the NT Government will also deliver their Aboriginal servicing and welfare budgets for the Northern Territory (1998: 613-14). NTAC will decide priorities, both between different purposes and different regions, for social and economic advancement, and it is to NTAC that the Regional Land Councils will have to satisfy those requirements of deep accountability by directing project moneys to approved purposes (1998: 610). Secondly, those land rights moneys that are currently committed, either by statute or negotiated agreement, to areas affected by development projects, will be freed from that commitment. By removing from the Act any notion of community or traditional entitlement, as currently understood via s35(2), Reeves fundamentally revises the principles governing disbursement of ABR funds. Thirdly, he further weakens the nexus between the location of mining projects and the direction of funding by restricting the application of the compensatory principle in NTAC's funding decisions (1998: 359, 361). It will be for NTAC to decide whether a Regional Land Council has made out a case for a community adversely affected by development within its region, and in doing so, NTAC may set off against that claim two considerations: the proximity and intrusiveness of the mining operation, and any public facilities available in an associated mining town (1998: 361, 368).

Such changes are revealing of Reeves' vision for the next generation of land rights. His intention to press all significant monetary flows from mining on Aboriginal land into the service of a uniform social engineering agenda is a substantial departure from the principles underlying the Woodward Report and the present Act. Among those principles enunciated by Woodward, from which Reeves claims guidance, are:

> there is little point in recognising Aboriginal claims to land unless the Aboriginal people concerned are also provided with the necessary funds to make use of that land in any sensible way which they wish. (Reeves 1998: 10)

Reeves' model for money management operates in the opposite direction. Funding will be substantially disconnected from land ownership, and allocated instead according to social need, and it will be spent not according to landowners' priorities for land use, but according to NTAC's priorities for mitigation of social deprivation. It therefore also runs counter to that other new purpose Reeves wishes to introduce into the Act, "to provide Aboriginal people with effective control over decisions in relation to their lands, their communities and their lives" (1998: 77). His steps in other sections of the report to shift political representation of traditional land interests from the national and Territorian levels to the regional, is thus contrasted here by steps to shift control over funding the other way.

2. The determination of local-level beneficiaries:

Moreover, having transferred authority over money away from the local level, he leaves behind a vacuum. As there will no longer be any community or traditional entitlement to compensatory moneys, the arrangements currently in place to determine and manage those entitlements will also be dispensed with. The long-standing vexation of the s35(2)

"area affected" formula will be purged from the Act (1998: 359-61), royalty associations will lose their legal niche in the land rights scheme and hand their assets and liabilities to NTAC (1998: 609), and individual cash payments will be abolished (1998: 362-3, 615). Eventually, however, via the decisions of NTAC and the Regional Land Councils, moneys have to reach local areas, and the question there remains "who gets what"?

With the proposal for a system of Regional Land Councils, Reeves is announcing the creation of new arenas of Aboriginal politicking across the Northern Territory. He recognises the frequency, cost and intractability of disputes in the land rights era (1998: Chap 9), and sees hope in reducing statutory intervention in such matters. He wants to confine not only processes of dispute resolution, but therefore also the larger question of the determination of rights, within Aboriginal structures that are small enough to relate directly to the traditional processes of their areas of responsibility, and are freed from compulsory resort to any statutory universal standard, such as the definition of traditional ownership. This raises two questions about the operations of RLCs: how do they receive instructions from their constituents, and how do they determine beneficiaries of funds and social programs?

Reeves recommends having resort to locally determined processes to allocate benefits. This arises in part from his concern to avoid that erosion of tradition that inevitably occurs when matters of orally-transmitted belief are exposed and adjudicated in legal and bureaucratic forums (1998: 176). He therefore attempts "to massively reduce statutory prescription concerning the operations of the [Regional] Land Councils and to rely on Aboriginal Territorians to run their own affairs on the basis of their own traditions" (1998: 596). Political process must therefore focus on the members of these Councils and the design of the programs they seek to have funded by NTAC. What will be the institutional and procedural channels for this politicking?

Western Arnhem Land experience suggests that the unfettered play of local process can lead to wasteful, incoherent and anomalous outcomes from which resentments emerge. One aspect of the failure of the Kunwinjku Association was the way in which access to benefits seemed to be governed by no principles other than a search for personal patronage and the cultivation and exploitation of strategic political links within a local population. The membership of the Gagudju Association, determined at large public meetings where no-one took on the responsibility of monitoring applicants or vetting claims, led me to argue for "the imposition of an ethnographically-informed constitutionality" (Levitus 1991: 168): a set of rules intended to protect well-founded indigenous attachments from submersion by momentary contingencies or sectional lobbying.

Most of the competition for membership of royalty associations in western Arnhem Land arose from a desire to gain access to those individual disbursements, especially of cash and motor vehicles, that Reeves wants to end. If that can effectively be ended, it should reduce the general level of agitation and anxiety that attends the local Aboriginal experience of articulating with large development projects. Among those charitable purposes that Reeves approves, upgraded housing and new outstations appear to be the

objects of greatest desire in western Arnhem Land. Less quantifiable, however, is the importance of recognition. Reeves argues that maintaining the historical link between mining royalties and the ABR will help preserve its funding (1998: 349). He does not recognise the flow-on of that relationship into the indigenous domain: the historical continuity of a local and traditionally-based sense of entitlement to benefit from mining operations in particular areas. The assessments that senior people gave in 1987 concerning access to benefits from the Ranger Mine emphasised real attachments to areas in the vicinity of the mine that were in total a small sub-region of Reeves' proposed West Arnhem Region. Moneys from the Ranger Mine were colloquially known as "land money".

On what basis do people now need to organise themselves in order to benefit from mining moneys? One might assume that funding for housing, health, education etc will be distributed to organisations within the respective RLC areas already charged with those responsibilities, though Reeves does not explicitly say. Is this also true of those extra disbursements of moneys from the ABR that he allows where "a particular Aboriginal community in an area of the Northern Territory where mining is being conducted" is able to persuade NTAC that it "is deserving of additional ABR funds, to ameliorate the affects that mining is actually having on the Aboriginal people resident in that community" (1998: 361)? Are private agreement moneys to be disbursed to those same welfare service organisations again? He doesn't say. If extra allocations of ABR moneys are made to compensate an adversely-affected community, what rules will govern local access to those benefits in a manner that is continuous with that intention to compensate? What should be the relationship between those beneficiaries and the particular group on whose behalf a Regional Land Council negotiates a mining agreement, and on what criteria is the composition of that latter group itself to be determined?

Much of the art of land rights and similar forms of legislation lies in the design of points of articulation between indigenous practice and introduced structures that are at once culturally meaningful and administratively workable (Levitus 1991). Reeves has taken the risk of leaving that design work incomplete.

3. Remote area futures:

Though this new model is unprescriptive as to who benefits, and underdetermined as to the structures through which benefits flow, it prescribes quite narrowly the form that those benefits may take. Reeves wants Northern Territory Aborigines to benefit from land rights moneys in particular ways. Housing, health and education are repeatedly mentioned, training less often, and jobs and employment less again. This relative neglect of employment is significant.

Reeves sees no economic future for communities in the development of land, only an economic future for individuals in the development of skills useful in the mainstream economy. He allows Regional Land Councils no independent power to invest. He designates NTAC to be the central Aboriginal investment agency (1998: 610), and prescribes only one criterion for its investments: that they are calculated to generate an

income stream sufficient to replace income from each mining project by the time it closes (1998: 366, 368). Aboriginal investment, then, is not charged with the responsibility to create Aboriginal employment. While Reeves sees tourism as a significant remote-area employer, all other possible uses of land resources are of minor significance for job creation. While business assistance and training are included as objects of land rights money (1998: 611), locally controlled and income-producing capital investment is given no importance. By default, remote Aboriginal lands seem to be envisioned as passive traditionalist reserves, or objects of service delivery and recipients of training programs (1998: 590-1, 611), used as productively as can be expected just by being available for Aboriginal occupation and visiting. An economic future for the people of these lands must be sought elsewhere, by acquiring modern skills and selling them where they are needed. In relation to that modernity, the countries of those people are non-viable (1998: 88, 90).

We can recognise this diagnosis, welcome the recognition of the economic value of Aboriginal satisfaction in land, and acknowledge the frustrations of remote-area Aboriginal employment. But there may be more to life than this. Amartya Sen's measure of "people's ability to do and be what they have reason to value" is a cultural standard before anything else, and it raises a series of questions about remote area Aboriginal life for which we have, at best, only partial or emerging answers. Some of those questions might be:
- What is the relationship between welfare payments and the maintenance of personal autonomy free from the demands of waged work, and how can that conception of personal autonomy fit with a policy concept of communal self determination?;
- What mapping of networks over what geographical area do we need to have done to understand the sociology of sport and ceremony across the Aboriginal Northern Territory, and how should that affect our assessment of the health and vitality of regional cultures?;
- What role are Aboriginal people living in bush camps and on pastoral stations playing in the contemporary environmental history of those areas, where they are the sole human agents? And what significance, if any, does traditionally-based land ownership have for the sustenance of all these socio-environmental systems?

With good answers to such questions, notions of quality of life can begin to be filled out. Without them, Amartya Sen's measure can only be made by adding up the social statistics. When the result looks bad, Reeves' solution is to steer the peoples of remote areas into a future that is not spelt out, but appears to have a metropolitan focus. In doing so, he turns away from another Woodward principle that he quotes: "Aborigines should be free to choose their own manner of living" (Reeves 1998: 11).

In setting out the background to the Review, Reeves claims continuity with the past principles and concerns that shaped the Land Rights Act. He says it is time "to implement contemporary solutions based upon the ideas underlying the Act and current needs and circumstances" (1998: xxi). His proposals for the management of money, however, and his clean-slate approach to local structures, emerge from a point external to the philosophy of the existing Act. Reeves invokes a different conception of land rights in

which they serve less as a base for self-determination of local peoples and more as an instrument of formal social equalising and economic merging. And, while not explicit on this, his vision for the future of land rights appears to be for a future away from the land.

References

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But ultimately, if the moneys are not compensatory and there is no such thing as an entitlement to benefit from them, then how much is left of the "rights" of land rights?

In other words, by going beyond a prohibition on individual payments, to centrally control the purposes on which collectively held land rights moneys may be spent, Reeves also goes beyond the demands of propriety in the disposal of public moneys, calls them into the service of an explicit regime of social engineering, and thereby attempts to steer the peoples of remote areas into the future. That future is not spelt out in this report, but it appears to have a metropolitan focus. *[Spell out here or elsewhere Reeves' concern for skilling people to get modern jobs]* For the remote areas themselves, and those who wish to stay in them, not much is offered. The Reeves vision for the future of land rights is a future away from the land. *[Then deal here with the question of what the land may have to offer?: take up the issue of Altman's forecast for next century and Reeves' dismissal of it; the economic anthropology of remote communities, the relation between autonomy and welfare etc]*

Re compensation: In particular, the strength of the point about compensatory intent has never been clear to me. By comparison with compensatory payments that are made in other areas of public policy, why are compensatory moneys that are paid pursuant to land rights policy in effect tied moneys? From where comes that implication mentioned above, that they should be used to remedy the social consequences of the disturbance? Here at least, however, Reeves is placing himself firmly in one of the established camps in this debate.*[Actually no, or not entirely, because area affected moneys are available to NTAC for distribution anywhere, so the compensatory portion is only that portion that the RLC is able to attract by successfully making arguments about adversely affected community. So the availability of moneys for compensatory purposes is highly qualified and conditional within this structure.]*

Comment on Jon Altman's paper for Reeves conference

At p2 and p3 the concept of economic rent will needs a little explanation for some readers, especially where on p3 you talk about "rent sharing" between Ab land owners and others; in what sense are the land owners sharing the rent?

P3 I have never understood why the notion of compensation and that of public moneys have to go together. In other public policy areas, compensation payments are for private use. Is it because in land rights policy, it is communities that are being compensated, not individuals, and therefore moneys have to go to communal purposes? I note that the Land Council submissions cited by Reeves argue that MREs are compensatory and therefore private.

Pp3-4 How could the concept of compensation be extended to the other 70%? I thought the idea of compensation related specifically to disturbance to traditional lands by development projects, not in a general sense to Aborigines for historical dispossession.

P4 re comparing the socioeconomic status of land owners with non-land owners: he claims to do this at pp79-82.

P6 re land council expenditures: I think you misconstrue Reeves' argument. He is not criticising Land Councils for spending so much money on admin; he is saying that this is the outcome of a land rights regime that is inappropriate for the future for allowing so much money to go on admin expenses. It needs to be changed so that the admin share of land rights moneys will be less and so more can go on social and economic betterment.

P8 Negotiated royalties are to be paid to the RLC that negotiated the mining agreement, according to Chapter 24 recommendations. But then it has to pass the monies to NTAC, which puts them into the RLC's account, and the RLC can only deal with those monies in a manner subject to NTAC control, either by investment or for approved public purposes; see Functions of a RLC in Chap 27 (p602 in the 1st ed), and Chap 28 at p615 in 1st ed.

P9 NTAC is to be appointed at first, then elected later.

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